

AFR

HIGH COURT OF CHHATTISGARH, BILASPUR**Writ Appeal No.315 of 2016**

Kuleshwar Prasad Choure son of Late H.R. Choure aged about 43 years
Vidyut Nagar Durg P.S. Pulgaon District Durg (Chhattisgarh).

---- Appellant**Versus**

1. State of Chhattisgarh through the Secretary Legal Metrology Indravati Bhawan Raipur (Chhattisgarh).
2. Controller Legal Metrology Department Indravati Bhawan Raipur (Chhattisgarh).

---- Respondents

For Appellant : Shri T.K. Tiwari, Advocate.

For Respondent/State : Shri Yashwant Singh Thakur, Deputy Advocate General

Hon'ble Shri Deepak Gupta, Chief Justice

Hon'ble Shri Justice Sanjay K. Agrawal

Order on Board**Per Deepak Gupta, Chief Justice****08/08/2016**

1. This appeal is directed against the judgment dated 7.6.2016 passed by the Learned Single Judge of this Court in Writ Petition (S) No.2089 of 2016 challenging the second order of suspension passed against the Appellant/writ petitioner.

2. The undisputed facts are that the Appellant is alleged to have demanded bribe from the complainant. The Appellant was arrested and sent to the judicial custody. He was placed under suspension vide order dated 3.11.2014 and thereafter, the Appellant approached this Court by filing Writ Petition (S) No.1422 of 2015. This Court relying upon the judgment by the Apex Court in (2015) 7 SCC 291 (Ajay Kumar Choudhary v. Union of India through its Secretary and another) directed that the case of the Appellant should be considered in light of the observation made in the said judgment. Thereafter, the State passed an order dated

29.12.2015 revoking the order of suspension passed against the Appellant.

3. The prosecution filed a charge-sheet on 18.4.2010. After the charge-sheet was filed, the Appellant was again placed under suspension vide order dated 25.5.2016. The Appellant challenged this order of suspension and the main ground of challenge is that in Ajay Kumar Choudhary (supra) the maximum period of three months is prescribed for keeping the person under suspension and according to the Learned Counsel for the Appellant, no person can be placed under suspension beyond the period of three months. Reliance has been placed on the aforesaid judgment, especially paragraph-21, which reads as follows:

“21. We, therefore, direct that the currency of a Suspension Order should not extend beyond three months if within this period the Memorandum of Charges/Chargesheet is not served on the delinquent officer/employee; if the Memorandum of Charges/Chargesheet is served a reasoned order must be passed for the extension of the suspension. As in the case in hand, the Government is free to transfer the concerned person to any Department in any of its offices within or outside the State so as to sever any local or personal contact that he may have and which he may misuse for obstructing the investigation against him. The Government may also prohibit him from contacting any person, or handling records and documents till the stage of his having to prepare his defence. We think this will adequately safeguard the universally recognized principle of human dignity and the right to a speedy trial and shall also preserve the interest of the Government in the prosecution. We recognize that previous Constitution Benches have been reluctant to quash proceedings on the grounds of delay, and to set time limits to their duration. However, the imposition of a limit on the period of suspension has not been discussed in prior case law, and would not be contrary to the interests of justice. Furthermore, the direction of the Central Vigilance Commission that pending a criminal investigation departmental proceedings are to be held in abeyance stands superseded in view of the stand adopted by us.

4. It is true that the Apex Court held that the currency of suspension should not extend beyond three months if within this period the

memorandum of charges/charge-sheet is not served on the government servant. This means that if the charge-sheet or memorandum of charges is not served upon the Appellant within three months then he cannot be kept under suspension beyond three months. The Apex Court in its wisdom felt that the employer should also work with alacrity, should not be indolent and delay the proceedings wherein the employee is under suspension. However, no such limit is laid when charge-sheet or memorandum of charges are filed.

5. The position in the present case is that the Appellant was reinstated and after that the charge-sheet was filed against him. He was again placed under suspension. The question is whether the outer limit of three months applies to the case of the Appellant or not. We are not in agreement with the Learned Counsel for the Appellant that the maximum period of suspension is three months. What has been said in *Ajay Kumar Choudhary (supra)* is that if memorandum of charges in case of departmental enquiry or charge-sheet in case of criminal case are not filed within 90 days, then the employee cannot be kept under suspension indefinitely. However, this limitation will not apply where charge-sheet or memorandum of charges are filed even beyond 90 days. In this behalf reference may be made to para 22 of the same judgment which reads thus:

“22. So far as the facts of the present case are concerned, the Appellant has now been served with a Chargesheet, and, therefore, these directions may not be relevant to him any longer. However, if the Appellant is so advised he may challenge his continued suspension in any manner known to law, and this action of the Respondents will be subject to judicial review.”

6. Therefore, in *Ajay Kumar Choudhary (supra)* since the charge-sheet had been filed, it was held that the directions may not be relevant any

longer. In the present case, the Appellant has been suspended second time on the basis of charge-sheet. The allegations against him are very serious in nature and it cannot be said that the order of suspension is so arbitrary that this Court should exercise its extra-ordinary jurisdiction.

7. We therefore find no merit in the appeal. It is dismissed accordingly.

Sd/-

(Deepak Gupta)
CHIEF JUSTICE

Sd/-

(Sanjay K. Agrawal)
JUDGE

Anu